

REMARKS

This amendment is submitted to make the changes in claim 128 suggest by the Examiner.

Reconsideration of the obvious-type double patenting rejection over claims 1-20 of Hodgen US 5,468,736 is also respectfully requested.

In the final rejection on page 2, the Examiner stated that the '736 patent claims are limited to the use of estrogen in the absence of progestin. All claims in this case require the combination of estrogen and progestin in HRT. In the Advisory Action, however, it is asserted that the absence of progestin is not a prohibition against adding an additional active to achieve an additional benefit. Even accepting this proposition as correct, the additional active cannot be estrogen because the '736 patent claims explicitly require its absence. It is not permissible to combine something with a base reference in such a way as to destroy the invention on which the base reference is based. *Ex parte Hartmann*, 186 USPQ 366 (BPAI 1974).

Thus, it is not permissible to ignore an explicit requirement of the "reference", namely that there is an absence of progestin. While it is theoretically proper to rely on

other art to substitute one entity for another or add some other material, the explicit requirement in the claims of the "reference" must be observed.

Withdrawal of the obvious-type double patenting rejection is respectfully requested.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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